

operated by minorities.”); ID., ¶ 305 (“[t]he Articles do not provide that [TTI/NMTV] was to be minority owned or controlled”). The Judge’s obsession with NMTV’s Articles, to the exclusion of all other evidence of a minority purpose, is vividly illustrated by the following transcript excerpt in which the Judge berates Ms. Duff about the lack of a stated minority purpose in NMTV’s Articles and refuses to listen to her explanations:

JUDGE CHACHKIN: Isn’t it a fact that the articles of incorporation for Translator TV, Inc., which [is] the forerunner of [NMTV], makes no mention of serving minorities? Its sole purpose is religious purposes. Isn’t that a fact? You can look at the articles of incorporation. Is there any mention here of minorities, serving minorities, anywhere in that? As a goal of Translator TV, Inc.?

MS. DUFF: Well, I think --

JUDGE CHACHKIN: Here’s the articles. Now, we’re not dealing with the taxes, we’re not dealing with the IRS now. We’re dealing -- This is the articles of incorporation. Is there anything in there which says anything about serving minorities?

MS. DUFF: Well, Your Honor, I think that just the fact that the ownership of the corporation is minority, this is a demonstration that obviously the minorities that are directors are going to be more concerned about the minority community than a board that was not minority-controlled, and our record shows that.

JUDGE CHACHKIN: Isn’t it a fact that you’ve told me that the goal, the overriding goal was to continue the, the ministry of, of, of TBN, of Mr. Crouch? Propagate the faith, you told me, the overriding goal, that was the overriding goal. Is there anything in this article to indicate any other goal besides, besides religious, serving as religion? I see nothing here in the articles of incorporation which says anything about serving minorities. Is there anything in the articles that says -- If that’s your goal, how come your articles of incorporation make no mention about serving minorities?

MS. DUFF: Well, the obvious thing is that we are serving minorities and I am a minority woman and David Espinoza’s a minority. E.V. Hill’s a minority.

JUDGE CHACHKIN: You can have all the minorities you want on the board of directors. The fact of the matter is there’s nothing there indicating you’re serving minorities. . . .

(Tr. 1876-77). See also Tr. 2008-11 (similar colloquy with Rev. Hill).

31. However, there is no Commission policy of any sort requiring a corporate minority applicant or licensee to state in its governing documents that it is minority-owned, operated or controlled, or to state an express purpose of serving minorities. The record establishes that NMTV's Articles of Incorporation were purposely drafted to strictly track the terms of the standard form for California non-profit corporations. (Tr. 3674, 3881-85). There is nothing even remotely sinister in this, let alone a ground for concluding that NMTV is not a bona fide minority corporation.^{16/} Indeed, at page 70 of their joint Reply Findings in this proceeding, NMTV, TBN and TBF pointed out to the Judge that the articles of incorporation of at least five preeminent minority-owned broadcast companies also contain no provision specifying that the corporations are to be minority-owned or are to serve any specific minority purpose.^{17/} Like so much of the evidence proffered by NMTV, this information is simply ignored in the ID.

**B. The Judge Made Numerous Other Erroneous
Assumptions About NMTV's Corporate Composition**

32. In addition to his flawed understanding as to the need for NMTV's corporate documents to expressly state a minority purpose, the Judge also bases his conclusions on a host of other erroneous assumptions about NMTV's "corporate composition." See ID, ¶ 307. For instance, the Judge decides that Dr. Crouch must have "ensured that he would retain iron clad control" over NMTV because, while

^{16/} Apparently the Judge would require that minority-owned corporations include special provisions in their charter documents stating that they are minority-owned and dedicated to serving minorities. One can hardly imagine a limit to the problems such a requirement would pose under constitutional and civil rights law.

^{17/} Ironically, only three years ago Judge Chachkin granted an application for a new FM station in Pawcatuck, Connecticut to an applicant which claimed a minority preference. See SaltAire Communications, Inc., 7 FCC Rcd 1404 (ALJ Chachkin), reversed, 7 FCC Rcd 5164 (1992). In awarding the permit to that applicant, the Judge never once examined the question of whether the applicant's charter documents specified minority ownership or a minority purpose.

NMTV's By-Laws permitted up to 10 directors, the company had only three or four. See ID, ¶¶ 108, 308 and n.40. It is perfectly customary, however, for standard forms of charter documents to provide for a number of directors well in excess of the number that actually exist. The Commission has declined to find grounds for inquiry based on the fact that an applicant had fewer directors than the number specified in its articles of incorporation, and this fact is similarly of no moment here. See California Stereo, Inc., 38 F.C.C.2d 1003, 1004 (Rev. Bd. 1973).^{18/}

33. The Judge further erroneously posits that NMTV should have "ask[ed] a minority from either the Odessa or Portland communities to join NMTV's board of directors." ID, ¶ 112. There is, however, absolutely no Commission rule or policy requiring any company -- minority-owned or not -- to select directors who are residents of the communities to which its stations are licensed. The Judge's premise harkens back to the old "integration" criterion in comparative cases, whereby the Commission assumed better service by a station whose owners lived in the community of license and worked at the station full-time.^{19/} That criterion has been discredited by the courts. See Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). In any case, even under the old comparative regime, minority principals in broadcast applicants could obtain a minority preference even if they did not live in the station's community of license. Waters Broadcasting Corp., 91 F.C.C.2d 1260, 1264-65 (1982), aff'd, 735 F.2d 601 (D.C. Cir. 1984).

^{18/} Again ironically, the Pawcatuck, Connecticut applicant to which Judge Chachkin awarded a construction permit three years ago had by-laws which similarly specified that "[t]he number of Directors which shall constitute the whole Board shall be not less than three (3) nor more than ten (10)." See SaltAire Communications, Inc., MM Docket No. 90-226, SaltAire Ex. 11, p. 5.

^{19/} See Policy Statement on Comparative Broadcast Hearings, 1 F.C.C.2d 393 (1965).

C. The Judge Erroneously Holds Non-Profit Religious Organizations to the Standards of Profit-Making Entities

34. Another false premise of the ID is that non-profit religious corporations should act like profit-driven businesses. The ID finds the “best illustrat[ion]” of TBN’s financial control over NMTV to be the facts concerning NMTV’s sale of its Odessa, Texas, station to Prime Time Christian Broadcasting, Inc. (“Prime Time”), and NMTV’s subsequent cancellation of the note it took back from Prime Time for the sale price. In noting that NMTV’s Directors did not consider selling the Odessa property to a buyer who would not operate as a TBN affiliate, the Judge states that “[c]learly, the continuation of TBN programming -- not return on investment -- was the main concern in finding a suitable buyer.” Similarly, the Judge criticizes the debt forgiveness because “[t]here was little, if any consideration given to modifying the terms of the note in order to make it easier for Prime Time to continue making payments.” ID, ¶¶ 314-315.

35. In reaching these conclusions, the Judge plainly assumed that non-profit religious corporations should deal with each other in the same manner as Wall Street bankers deal with borrowers. As NMTV’s Directors clearly recognized on the record, however, the relationship between non-profit religious entities is typically donative and one of mutual assistance. (TBF Ex. 104 at 16; Tr. 2007-08, 2342, 2875, 2997, 4301-02). In the specific case of Odessa, NMTV’s Directors testified, without contradiction, that there were considerations other than profit which guided them with respect to the sale to Prime Time and the forgiveness of the Prime Time debt. Rev. Hill testified, for example, that NMTV made the decision to sell the Odessa station to Prime Time, which would continue to operate the property as a religious station, rather than “lose that avenue of spiritual opportunities in that area.” (Tr. 1981). He stated that NMTV felt that even if it did not recover its money, if Prime Time could expand Christian television, that was a greater value. (Tr. 2040). Similarly, Dr. Ramirez testified as to the shared values of Prime Time and NMTV and said he felt religious programming was needed for the Odessa region. (Tr.

4065, 4069, 4071).^{20/} In assuming that the “bottom line” rather than a shared interest in propagating the faith should dictate the decisions of non-profit religious entities -- a misperception that drove one of the ID’s primary adverse factual decisions -- the Judge erred yet again.

**D. The Presiding Judge Wrongly Found that Ms. Duff
“Aided and Abetted” TBN and Crouch’s Alleged
Control Over NMTV**

36. At ¶ 323 of the ID, the Judge reaches the conclusion that “TBN and Crouch, aided and abetted by Duff, has exercised *de facto* control over all facets of TTI/NMTV’s business.” (Emphasis added). There is absolutely no record evidence, however, to support any finding or conclusion that Ms. Duff somehow acted as some sort of co-conspirator to establish alleged TBN control over NMTV. This phraseology by the Judge appears to be simply an unwarranted extension of the Judge’s conclusion that Ms. Duff served on NMTV’s Board of Directors merely as an agent of Dr. Crouch. As discussed above, that conclusion ignores Ms. Duff’s substantial involvement in NMTV’s affairs, her materially greater responsibility for NMTV vis-a-vis TBN, and the numerous occasions in which Ms. Duff acted independently and contrary to Dr. Crouch’s wishes. In any case, the Judge’s conclusion that Ms. Duff affirmatively “aided and abetted” TBN’s alleged control over NMTV goes far beyond the bounds of the

^{20/} In the Judge’s view, “the real motivation for cancelling Prime Time’s debt was the concern that if Prime Time went bankrupt, TBN might lose an affiliate station in Odessa as well as other affiliate stations that Prime Time then owned.” ID, ¶ 315. The ID cites nothing in the factual record to support this conclusion, and, again, the Judge’s speculation ignores the testimony of NMTV’s minority Directors as to their independent beliefs that religious programming needed to continue to be provided in the Odessa market. Furthermore, the Judge in this instance and elsewhere attaches sinister connotations to the fact that NMTV’s Directors independently chose TBN as their stations’ source of religious programming. See, e.g., ID, ¶¶ 315-320. He ignores Ms. Duff’s testimony that she had had long experience in dealing with religious program sources and that TBN has the largest number of available programs (including non-TBN produced programming such as the “700 Club”). Ms. Duff testified that “I had the top people [religious hosts] already in a package and I didn’t have to go and work individually with different program producers.” (Tr. 1758).

record evidence, and should be specifically reversed.

E. The Judge Wrongly Found That TBN's Alleged Control Over NMTV Continues to the Present Day

37. In addition, the Judge intemperately extends his conclusion that TBN controlled NMTV not only to the time period at issue in the hearing, but to the present day. At ¶ 305 of the ID, the Judge states that

TTI/NMTV was conceived as and remains a subsidiary of TBN, totally dependent on TBN for money, supervision, and overall direction. In fact, to this very day, TTI/NMTV has never developed, much less implemented, any plan to "break away" from its parent company, TBN. (Emphasis added).

38. These conclusions are simply false and must be vacated. Most fundamentally, it is impossible for the Judge to render findings or conclusions relating to the present day, for the record of this case closed in May 1994 and the events under consideration in the hearing spanned a time period ending in 1993. Moreover, the Judge's "present day" conclusions are inaccurate, because since the close of the hearing record NMTV has taken numerous steps to supplement its always-existing decisional autonomy with financial, technical, and operational independence. Those steps are detailed in a Consolidated Opposition filed by Mayville Communications, Inc. ("Mayville") -- a company the directors of which are Ms. Duff, Rev. Hill, and Dr. Ramirez, but not Dr. Crouch -- to various petitions to deny an application for Mayville to acquire the construction permit for a full-power television station in Mayville, Wisconsin (File No. BAPCT-950921KE). Accordingly, the Board must specifically overrule the Judge's conclusions that NMTV at present is controlled by TBN.

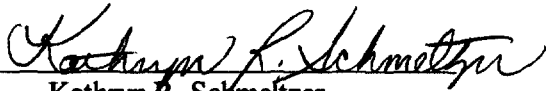
Conclusion

For the foregoing reasons, NMTV urges the Commission to reverse the ID.

Respectfully submitted,

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Dated: January 23, 1996

CERTIFICATE OF SERVICE

I, Leslie B. Payne, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **"CONSOLIDATED BRIEF AND EXCEPTIONS OF NATIONAL MINORITY T.V., INC."** were sent this 23rd day of January, 1996, by first class United States mail, postage prepaid, to the following:

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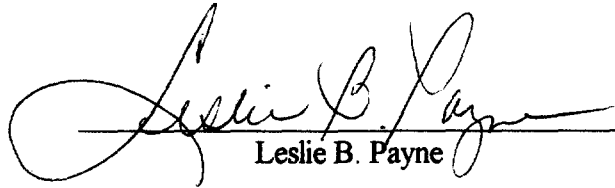
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